Review (3)

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

P.R. No. 29/05 dated 29.5.05
Presented by Shri L.N. Tamaskar
dated 29.5.05

WRIT PETITION NO. 2114 / 2005

PERTITIONER : **M/S. YUGBODH PRAKASHAN**
(Registered Partnership Firm)
Registered Office : 6, Samta Colony
Krishna Talkies Road, Raipur (C.G.)
Through : Partner
Atmbodh Agrawal, aged 35 years
S/o Shri Lal Chand Agrawal
R/o 6, Samta Colony, Krishna Talkies Road
Raipur (C.G.)

NOTARY
Telibandha Raipur
Dist. Raipur (M.P.)
Reg. No.
M.P. 27/12/1-98
Government of India

VERSUS

RESPONDENTS : 1. **CHHATTISGARH MADHYAMIK SHIKSHA MANDAL**
Pension Bada, Raipur (C.G.)
Through : Secretary.

Counsel for Respd. 2
on behalf of Mrs. Ramkumari Singh Mandal
Advocate
29/5/05

2. **CHHATTISGARH PATHYA PUSTAK NIGAM**
Gurudwara Road, Shyam Nagar
Telibandha, Raipur 492006
Through : Managing Director.

PETITION UNDER ARTICLES 226 / 227 OF THE CONSTITUTION OF INDIA

1. Particulars of the Petitioner :-

As given in the cause-title.

(74)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.1856 of 2005

M/s Yugbodh Prakashan, Raipur
- Versus -
The Chhattisgarh Madhyamik Shiksha Mandal Raipur

Writ Petition No.2114 of 2005

M/s Yugbodh Prakashan
- Versus -
Chhattisgarh Madhyamik Shiksha Mandal and another

Writ Petition No.2407 of 2005

M/s Yugbodh Prakashan
- Versus -
State of Chhattisgarh & others

Writ Petition No.2636 of 2005

M/s Yugbodh Prakashan
- Versus -
State of Chhattisgarh & others

AND

Writ Petition No.2749 of 2005

M/s Yugbodh Prakashan, Raipur

-Versus-

State of Chhattisgarh & Others

POST FOR ORDER ON 1ST AUGUST, 2005

Sd/-
L.C. Bhadoo
Judge

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.1856 of 2005

M/s Yugbodh Prakashan, Raipur
- Versus -
The Chhattisgarh Madhyamik Shiksha Mandal Raipur

Writ Petition No.2114 of 2005

M/s Yugbodh Prakashan
- Versus -
Chhattisgarh Madhyamik Shiksha Mandal and another

Writ Petition No.2407 of 2005

M/s Yugbodh Prakashan
- Versus -
State of Chhattisgarh & others

Writ Petition No.2636 of 2005

M/s Yugbodh Prakashan
- Versus -
State of Chhattisgarh & others

AND

Writ Petition No.2749 of 2005

M/s Yugbodh Prakashan, Raipur

-Versus-

State of Chhattisgarh & Others

Present: -

Shri V. G. Tamaskar, Advocate:	For the petitioner.
Shri Prashant Mishra, Additional Advocate General:	For the State/respondent No.1.
Shri H. B. Agrawal, Sr. Advocate with Shri B.D. Guru & Miss Shipra Biswas, Advocates:	For the respondent No.2.
Shri Ranbir Singh Marhas, Advocate:	For the respondent No.3.

O R D E R

(Passed on 16th August, 2005)

L.C. BHADOO, J.

1. By this common order Writ Petitions No.1856/2005, 2114/2005, 2407/2005, 2636/2005 and 2749/2005 are being disposed of because same the petitioner has consecutively filed these 5 petitions calling in question the action of respondents Chhattisgarh Board of Secondary Education and the State Government whereby they decided to give the printing, publishing and circulation of the text books of class-9th and 10th to the Chhattisgarh Pathya Pustak Nigam in contravention of the agreement dated 12-6-2002 executed between the petitioner and Chhattisgarh Board of Secondary Education for printing, publishing and circulation of the text books for a period of 5 years with effect from 2002.

2. Brief facts necessary for the disposal of these writ petitions are that the petitioner is engaged in printing, publishing and selling the text books. In the year 2002, the Secretary of the respondent Board prescribed text books for the standard of class-9th, 10th, 11th and 12th and thereafter, respondent Board entered into an agreement on 12-6-2002 for a period of 5 years with the petitioner allowing him printing, publishing and circulation of text books of the above classes viz. for class-10th 'Sanskrit Samanya', for class-10th 'Hindi Special', for class-12th 'Hindi Special', for class-9th 'General English', for class-10th 'General English' and for class-12th 'General English' and the petitioner herein was required to pay royalty of Rs.3,50,000/- per year. Thereafter, the petitioner started printing, publishing and circulation of the above books. He printed, published and circulated these books for the year 2002-03, 2003-04 and 2004-05 after depositing royalty of Rs.3,50,000/- per year. Even the petitioner deposited the royalty of Rs.3,50,000/- for the session 2005-06. However, vide letter, dated 26-4-2005 Chhattisgarh Madhyamik Shiksha Mandal, Raipur informed the petitioner that the State of Chhattisgarh has constituted Chhattisgarh Pathya Pustak Nigam (Corporation) and a decision has been taken that now the said books shall be published by the said

Chhattisgarh Pathya Pustak Nigam, therefore, manuscript of the books be returned to them. The petitioner herein challenged the said action of the Board vide Writ Petition No.1856/2005. However, when the matter was taken up for hearing on 12-5-2005, Mr. H. B. Agrawal, learned Senior Counsel for the Board, informed that the letter dated 26-4-2005 has been withdrawn by the Board.

3. Chhattisgarh Pathya Pustak Nigam informed the petitioner on 12-5-2005 about the caveat filed by them. On 24-5-2005, the petitioner again filed a Writ Petition No.2114/2005 for seeking direction that Chhattisgarh Madhyamik Shiksha Mandal cannot directly or indirectly revoke the agreement dated 12-6-2002 and further sought relief that respondents Chhattisgarh Madhyamik Shiksha Mandal and Chhattisgarh Pathya Pustak Nigam be restrained from printing, publishing, distributing and selling the text books. However, the State of Chhattisgarh vide order dated 1-6-2005 declared that it has decided that all the text books in question shall be printed, circulated, published and distributed by the Chhattisgarh Pathya Pustak Nigam. The petitioner was constrained to file another Writ Petition No.2407/2005 questioning the said order of the Government dated 1-6-2005. The petitioner again filed a Writ Petition No.2636/2005 questioning the decision of respondents that they have changed the syllabus without giving any notice to private publishers which are authorized and registered by it, and the 5th petition namely, W.P. No.2749/2005 was again filed by the petitioner praying therein that the order dated 30-4-2005 issued by the Government be quashed whereby it was decided to change the books of class-9th and 10th and further to direct the respondents to withdraw all the text books printed, circulated, published and sold contrary to prospectus, 2002.

4. Return has been filed on behalf of Chhattisgarh Madhyamik Shiksha Mandal in which it has been mentioned that the Board of Secondary Education was constituted on 20-7-2001 after re-organization of the

State. Thereafter, the Board undertook the task of laying down the syllabi for the secondary education and after due exercise, the syllabi was prepared and published on 15-3-2002 (Annexure-R/2). On the basis of syllabi laid down by the Board, some private publishers entered into an agreement with the Board for publication of the text books for distribution as the authorized and authenticated study material in the secondary schools of the State of Chhattisgarh. On 5.8.2004, the State Government constituted a Text Books Corporation (for short 'TBC') vide Annexure-R/3. The State Government issued an order on 30th April 2005 vide Annexure-R/4 to the effect that the revised manuscript approved by the Curriculum Committee of the Board has been received with a request to prescribe the same text books. On the request and in consultation with the Board the State Government in exercise of powers under Section 4 of the Chhattisgarh Prathamik, Middle School Tatha Madhyamik Shiksha (Pathya Pustakon Sambandhi Vyavastha) Adhiniyam, 1973 (hereinafter referred to as the 'Adhiniyam, 1973') prescribed the text books for class-9th and 10th. Since the TBC had already been constituted, the Board and the State Government decided to hand over the work of preparation, printing and distribution of text books to the TBC. The policy decision was taken to provide text books free of cost to all the girl students of class-9th and 10th in the Government and other aided schools in the State of Chhattisgarh. This scheme shall benefit about 2 lakh girl students through out the State. The State Government thereafter issued an order on 1-6-2005 vide Annexure-R/5 in exercise of powers under Section 5 of the Adhiniyam, 1973 authorizing the TBC to prepare and print the text books. In this regard, the TBC issued a press release vide Annexure-R/6. The order dated 30th April 2005 has been issued by the State of Chhattisgarh in exercise of powers under Section 4 of the Adhiniyam, 1973. The State Government has exercised statutory powers to prescribe text books and thereafter to hand over the job of preparation, printing, publication and

distribution to Text Books Corporation (TBC). The text books prepared, printed and published by the TBC are cheaper by approximately 50% than the text books printed and published by the petitioner. The distribution of text books to poor students of the State of Chhattisgarh is an element of public welfare and public interest, therefore, the decision of the State Government cannot be said to be arbitrary or unreasonable. Similar return has been filed on behalf of Text Books Corporation and the State Government and it has been prayed that the writ petitions be dismissed.

5. I have heard Shri V.G. Tamaskar, learned counsel for the petitioner, Shri Prashant Mishra, Additional Advocate General for the State/respondent No.1, Shri H. B. Agrawal, Senior Advocate with Shri B.D. Guru & Miss Shipra Biswas, Advocates for respondent No.2 and Shri Ranbir Singh Marhas, counsel for respondent No.3.

6. Shri V.G. Tamaskar, learned counsel for the petitioner argued that since the Madhyamik Shiksha Mandal entered into an agreement with the petitioner on 12-6-2002 for printing, publishing and circulation of the text books in question for a period of 5 years, therefore, respondents were not entitled to revoke the said agreement/contract unilaterally. The other ground of challenge raised by Shri Tamaskar was that as per regulations No.30 to 39 of the Regulations of the Board of Secondary Education, Madhya Pradesh, 1965 (for short 'the Regulations, 1965), which is in force in the State of Chhattisgarh, the Committees of Courses shall be constituted and each Committee of Courses shall lay down a syllabus in the subject or subjects. Every Committee of Courses shall meet in the month of August or September of each year to draw up courses for examinations and thereafter courses approved by the committee shall be submitted to the Board ordinarily at its January meeting by the Convener and the Board will consider recommendations of the committee and thereafter decide the matter. The Board shall recommend the text books to the State Government for prescription

by them under Section 4(1) of the Adhiniyam, 1973. Therefore, how the Government was able to decide the text books in such a short period, as such the various actions taken by respondents are illegal and contrary to the agreement/contract entered into between the petitioner and respondent Board, therefore, respondents be restrained from printing, publishing and circulation of text books in question by Pathya Pustak Nigam and they be further directed to allow the petitioner to print, publish and circulate the text books and for that purpose, the petitioner has already deposited the royalty of Rs.3,50,000/- for the session 2005-06.

7. On the other hand, Shri Ranbir Singh Marhas and Shri Prashant Mishra, Additional Advocate General argued that as per the provisions of Sections 3, 4 and 5 of the Adhiniyam, 1973 respondents are entitled to prescribe the text books and to give it for printing, publishing and circulation to anyone. As per the provisions of Section 5 the State Government may undertake the preparation, printing or distribution of text books itself or cause the text books to be prepared, printed or distributed through such agency as it may deem fit on such terms and conditions as may be prescribed. Since the Government has taken a policy decision to provide free of cost the text books of the subjects in question to the girl students and in pursuance of the said policy decision the Government has authorized the Pathya Pustak Nigam to print, publish and circulate the books which are cheaper by 50% than the petitioner's books. They further argued that even in the case of the petitioner after formation of the State of Chhattisgarh before entering into an agreement in question dated 12-6-2002 the Board had never sought approval from the State Government as envisaged under Section 4 of the Adhiniyam, 1973 and that without the approval of the Government entered into an agreement with the petitioner, and even those text books were not approved by the State Government as per the provisions of Section 4 of the Adhiniyam, 1973. In the present case,

(81)

the State Government prescribed the text books after consultation with the Board in consonance with the provisions of Sections 3 and 4 of the Adhiniyam, 1973, therefore, the petitioner has no right to question the action of respondents.

8. Having heard learned counsel for the parties, I have examined the legal position. Section 2(d) of the Adhiniyam, 1973 envisages that '"Syllabi" means a document containing courses of instructions for each standard of primary education, middle school education and secondary education.' Section 2(e) of the Adhiniyam, 1973 defines the 'text book' which envisages that:

(i) in relation to a final examination means any book approved by the State Government in accordance with the syllabi prescribed under this Act.

(ii) in relation to any other examination held in an approved school or a school recognized by the Board means any book approved by the State Government in accordance with the syllabi prescribed under this Act.

Section 3 envisages about laying down of syllabi and once the syllabi is fixed, the follow up action is prescription of the text books in accordance with the syllabi. Sub-section (1) of Section 3 envisages that 'Subject to the provisions of sub-section (2) the State Government may, from time to time, in relation to primary education and middle school education and the Board may, from time to time, in relation to secondary education lay down syllabi and publish the same in such manner as may be prescribed.' Sub-section (2) of section 3 envisages that 'The syllabi laid down under the authority of the State Government in the case of primary education and middle school education and by the Board, in the case of the secondary education and in force immediately before the appointed day shall be the syllabi laid down and published for the purpose of sub-section (1).

9. Sub-section (1) of Section 4 envisages that 'The State Government may, by order, prescribe the text books according to syllabi laid down under Section 3: Provided that text books for secondary education shall not be prescribed without prior consultation with the Board.' Section 5 deals with preparation, printing and distribution of text books which envisages that 'The State Government may, if it considers it necessary so to do, undertake the preparation, printing or distribution of text books itself or cause the text books to be prepared, printed or distributed through such agency as it may deem fit on such terms and conditions as may be prescribed. Therefore, plain reading of the above provisions of the Adhiniyam, 1973 makes it clear that the text books for secondary education are to be prescribed by the State Government with prior consultation of the Board in accordance with the syllabi laid down under Section 3.

10. If we look into the facts of the present case, the Board and the State Government have categorically stated in their return that while entering into the agreement/contract with the petitioner, the text books were not prescribed by the State of Chhattisgarh and only the text books were prescribed by the Board without approval of the Government and the same were being printed by the petitioner, whereas, as per the return filed by the State Government, the Board on the request of the State Government revised the text books and prepared a manuscript of the text books afresh in accordance with the syllabi. The State Government issued an order on 30th April 2005 to the effect that the revised manuscript approved by the Curriculum Committee of the Board has been received with a request to prescribe the same text books. On the request and in consultation with the Board the State Government in exercise of powers under Section 4 of the Adhiniyam, 1973 prescribed the text books for class-9th and 10th. Thereafter, the State Government under Section 5 of the Adhiniyam, 1973 vide order dated 1-6-2005 authorized the Text Books Corporation to

publish the text books and the Text Books Corporation which is a Government Body was constituted by the State Government vide order dated 5-8-2004, therefore, the action of the Government cannot be said to be illegal or arbitrary or unreasonable. Therefore, the agreement dated 12-6-2002 with the petitioner by Board was not in consonance with the provisions of Sections 4 and 5 of the Adhiniyam, 1973 which are extracted above, as the same was not binding on the State Government because the State was not party to the said agreement dated 12-6-2002. Moreover, the change of text books and to get those text books printed, published and distributed through the Chhattisgarh Pathya Pustak Nigam constituted by the State Government in the year 2004, and that too distributed those books free of cost to the girl students of class-9th and 10th was a policy decision of the State Government and the same cannot be questioned, and for that I am fortified in my view by the decision of the Hon'ble Apex Court in the matter of **STATE OF MADHYA PRADESH AND ANOTHER ETC., V. RAM RAGUBIR PRASAD AGARWAL AND OTHERS** reported in **AIR 1979 SUPREME COURT 888**.

11. As far as point raised by learned counsel for the petitioner about the compliance of the regulations 30 to 39 and 213 of the Regulations, 1965 is concerned, the Board and the State Government have categorically mentioned that the text books were prescribed by the committee and thereafter the Board revised the text books in accordance with the report of the committee, prepared the manuscript in accordance with the syllabi and the same were sent to the Government for its approval and the Government after its approval issued an order dated 30-4-2005. Even the manuscript were also called by this Court at the time of hearing and they produced the manuscript which were approved by the Curriculum Committee, therefore, it cannot be said that the text books were

prescribed by the State Government without following the procedure as laid down in the Regulations, 1965 and Adhiniyam, 1973.

12. The text books have been changed by the State Government as per the provisions of Sections 3 and 4 of the Adhiniyam, 1973 and the printing, publishing and distribution have been given to the Chhattisgarh Pathya Pustak Nigam as per the provisions of Section 5 of the Adhiniyam, 1973. The Board has to act according to the policy decision of the State Government and the State was not party to the agreement/contract entered into between the petitioner and the Board, therefore, the petitioner is not entitled to enforce the said agreement/contract. However, if the petitioner has suffered any financial loss on account of the agreement entered into between the Board and the petitioner, he is at liberty to act in accordance with law.

13. In the result, all the above writ petitions have no force for the reasons stated above, the same are liable to be dismissed and they are hereby dismissed. There shall be no order as to the costs.

Sd/-
L.C. Bhadoo
Judge

Barve